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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,817	01/03/2002	Sidney Braginsky	02-129	6560

7590 06/02/2004

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Pittsburgh, PA 15222

EXAMINER
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BUI, VY Q

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/037,817	Applicant(s) BRAGINSKY ET AL.	
	Examiner Vy Q. Bui	Art Unit 3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.  
     4a) Of the above claim(s) 1-29, 37, 40, 44, 46 and 49-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-36, 38, 39, 41-43, 45, 47 and 48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/13/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of method claims of invention II in Paper No. 3/30/2004 is acknowledged. Invention II includes species shown in Fig. 1 and Fig. 2. Species 1 as shown in Fig. 1 (claims 30-36, 38-39, 41-43, 45, 47-48) is examined as below and species 2 (claims 37, 40, 44, 46, 49, 50) as shown in Fig. 2 is withdrawn from further consideration.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features (barbs/hooks) as recited in claims 41-42 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 39 is objected to because of the following informalities: claim 39 is identical to claim 39. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 30-33, 35, 38-39, 45, 47-48 are rejected under 35 U.S.C. 102(b) as being anticipated by NASH et al. (6,030,395).

As to claims 30-33, 35, 38-39, 45 and 47-48, NASH (Fig. 16-17; col. 6, lines 4-7) shows support assembly 312&314 of a biologically inert/resorbable polymeric material comprising two members flexibly joined together by sutures 326. Notice that polymeric material can be considered as a shape memory material because the material has some degree of elasticity and members 312&314 joined together by sutures 326 can be considered as some what flexible in comparison to welding or glueing for example.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 34, 36 and 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over NASH et al. (6,030,395).

As to claims 34 and 36, NASH discloses substantially main structural limitations of the claimed invention, except for the device comprises a biological active/radioactive material. It is well known in the art to use a biological active/radioactive material for a body lumen implant or support to provide a desirable treatment effect to the treatment site. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make NASH device of a biological active/radioactive material in order to provide a desirable treatment effect to the treatment site.

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As to claims 41-43, NASH discloses substantially main structural limitations of the claimed invention, except for the device comprises barbs/hooks/adhesive to secure the support to the body lumen. It is well known in the art at the time of the invention to use barbs/hooks/adhesive to secure and implant/support to a body lumen. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide barbs/hooks/adhesive to secure an implant/a support to a body lumen for these means for securing an implant/a support to a body lumen are well known.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Vy Q. Bui  
Primary Examiner  
Art Unit 3731

05/29/2004